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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. EVERARDO AGUIRRE IBARRA, Defendant and Appellant.	G056415 (Super. Ct. No. 13NF0284) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John Conley, Judge. Affirmed

Diane E. Berley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

FACTS

Appellant Everardo Aguirre Ibarra was charged with 6 counts of lewd conduct with a child under the age of 14 (Pen. Code, § 288, subd. (a)) and one count of lewd conduct with a child age 14 years of age and 10 years younger than he was (Pen. Code, § 288, subd. (c)). The victims were 3 boys in the household of his cousin's family, with which he lived for the first 10 years of the century, and a neighbor.

The molestations took place between 2001 and 2007 but were not reported at the time. The children were then very young and unable to appreciate what had happened. But in 2013, the oldest child, now an adult, walked into the Anaheim Police Department and reported he had been molested by his cousin. Further investigation included a covert, recorded phone call to Ibarra, in which he admitted his conduct with two of the victims.

Counsel was appointed for Ibarra and a jury trial ensued. The victims testified Ibarra lured them into his room with video games and then molested them. The jury convicted him on all counts, and the court sentenced him to imprisonment for 60 years to life (three of the sentences were run concurrently to the base term, rather than consecutively)

DISCUSSION

Ibarra filed an appeal, and we appointed counsel to represent him on that appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against her client, but advised the court she could find no issues to argue on appellant's behalf. Appellant was invited to express his own objections to the proceedings against him but did not. Under the law, this put the onus on us to review the record and see if *we* could find any issues that might result in some kind of amelioration of appellant's lot. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) It should be emphasized that our search was not for issues upon which appellant *would* prevail, but only issues upon which he *might possibly* prevail.

We have examined the record and found no arguable issue. This is not surprising. In fact, it is what we find in the vast majority of cases in which appellate counsel files a *Wende* brief. Even the most cynical observer of the legal system would have to recognize that appellate counsel has a financial incentive for finding issues. The simple matter is counsel makes more money if he/she finds an issue that is arguable than if he/she does not. So while it sometimes happens that an appellate court will find issues after appellate counsel has thrown in the towel, it is unusual.

This case is not unusual – at least not in any way that benefits appellant. The case against him was unusually strong, since it included his admission of some of the molestations in a phone call placed by one of the victims and recorded by the police. That left very little room for an effective defense. Counsel's decision not to put his client on the stand seems unassailable under those circumstances, even though it meant he had no way of contradicting the victims' testimony and had to rely on inconsistencies developed in cross-examination to create doubt. Indeed, the only witnesses he could call – appellant's wife and mother-in-law – were not very helpful.

Defense counsel was reduced to a closing argument in which he told the jury that while it might seem he was "nitpicking" (his word), he was really trying to get them to focus on small inconsistencies in the evidence that might add up to reasonable doubt. It was all he could do. The evidence was not only considerably greater than the legal standard requires, it was largely overwhelming.

There were no controversial searches or questionable means used in obtaining statements. The instructions appear appropriate, and the sentence, while heavy (the trial judge noted that the sentence was virtually indistinguishable from what appellant would have received had he killed the children), was in keeping with the statutory scheme, and was 43 years shorter than it could have been.

In short, we have searched for other issues and we have found none that we think has any chance of success. We believe appellate counsel's decision to file a *Wende* brief was well-advised. The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.